

2. November 7, 2019 Memorandum

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MEMORANDUM

TO: George Plummer, Multnomah County Land Use Planning
FROM: Phillip C. Querin, QUERIN LAW, LLC
DATE: November 7, 2019
RE: One Acre Graveyard Issue on Sauvie Island

What follows is a brief summary of the issue I've been discussing with you over the past few weeks:

- I represent Sheryl Anderson and James L. Smith, owners of a 44-acre parcel of land on Sauvie Island. There is a residential structure located on the land. My clients have sought to sell the property. However, the County has informed them that their land contains an illegal lot because there is a one-acre pioneer cemetery lot under separate ownership.
- I enclose herewith a copy of a Title Plant Records Report from Lawyers Title Company of Oregon **Exhibit 1** ("Report"). It references two parcels: Parcel 1, belonging to my clients, and Parcel 2 belong to the McQuinn Family Pioneer Cemetery Association, Inc. and the heirs and devisees of Alexander and Rebecca McQuinn. Item No. 1, begins with the following conveyance:

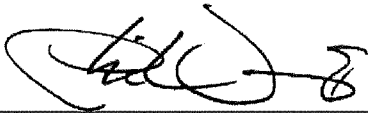
"On May 20, 1897 Joseph A. Sunderland and Susan Sunderland conveyed the land to Alexander Lumsden 'excepting one acre of land now in use for the purpose of a Cemetery Tract". (Emphasis added.)
- This conveyance consisted of the land that was originally known as the Alexander McQuinn Donation Land Claim, and appears to have excepted out land that was then used as a cemetery. To the best of our information, knowledge, and belief, it was never used as a cemetery thereafter.

- Most, but not all of the subsequent conveyances contain similar exclusions for the Cemetery Tract.
- It appears that this acre of land was *never a legally described parcel* appearing on the public record - it just existed because it had been used as a cemetery when it was a part of the McQuinn Donation Land Claim. Since it was “excepted out” of the subsequent conveyances, it was never transferred out of the Alexander McQuinn Donation Land Claim. However, it was never probated; it just remained an undefined acre of land that had once been a cemetery.
- Maxine Daly (who claimed some heirship to the original McQuinn family), created a legal entity called the McQuinn Family Pioneer Cemetery Association, Inc. (“Association”). My information indicates that she or someone on her behalf, contacted the tax assessor’s office about getting a separate tax lot number assigned to the Cemetery Tract, and the answer was that the land first needed to be deeded to the corporation. So that is what Ms. Daly did - even though she never acquired legal title.
- Ms. Daly apparently had the Cemetery Tract surveyed, and entered the legal description into a Quitclaim Deed, and on February 9, 1986 conveyed the Cemetery Tract to the Association. A copy of the Quitclaim Deed is enclosed as **Exhibit 2**. This is the genesis of the “illegal lot” designation Multnomah County has given to my clients’ land and the Cemetery Tract. Yet, my clients never participated in the fictitious creation of the lot.
- The recorded Daly Quitclaim Deed included a number of attached forms titled “Designation of Heir Representative” ostensibly signed by McQuinn heirs, authorizing Ms. Daly to “receive property valuation notices, tax statements and communications relating to real property account number R-97106-0170 (McQuinn Cemetery, Sauvie Island, Multnomah County, Oregon).” I enclose a copy of one of the signed forms as **Exhibit 3**. The “Designation” did not authorize her to create and record the bogus Quitclaim Deed.
- There is no signed and notarized Power of Attorney from the putative heirs giving Ms. Daly any authority on their behalf to convey the Cemetery Tract to the Association. In any event, such an authorization would have been a nullity, since there was never a probate of the McQuinn family’s interest in the Cemetery Tract.
- Since Ms. Daly had no recorded interest in the Cemetery Tract, and there was no probate, she transferred nothing to the Association through the Quitclaim Deed.

- In order to gain access to the Cemetery Tract - since an easement was never reserved by the McQuinns - in April 1989, Dean Fitzwater, attorney for the Association, petitioned Multnomah County for a Way of Necessity, which was granted.¹
- In 1992-93 my clients filed two lawsuits, one against the Association and Maxine Daly for their shenanigans, and the other against Multnomah County for granting the Way of Necessity. The cases were consolidated and ultimately resolved, resulting in an Easement and Settlement Agreement, copies of which are enclosed herewith as Exhibit 4 and Exhibit 5, respectively.
 - Section 1.3 of the Easement provides that in the event the Cemetery Tract is "sold, transferred, assigned or hypothecated in any form, or [the Association] becomes dissolved or is no longer in compliance with laws and regulations of the State of Oregon, the Easement *** shall become null and void, and have no legal effect." (Emphasis added.)
 - The Association has been involuntarily dissolved. It no longer exists.
(See Exhibit 6, attached.)

Based upon the above, it is our position the Graveyard Tract should not be treated separately apart from my clients' land. The Daly Quitclaim was a ruse; the Association acquired nothing by it, and the Easement is, by its own terms, "null and void".

My clients' interest is to have Multnomah County recognize the entirety of their land as a single legal parcel. After review of the above, please let me know how we might resolve this matter.



Phillip C. Querin

¹ It is unclear to me how the Daly Quitclaim Deed was allowed to support a Way of Necessity, since the Association never had legal title. It only had what Ms. Daly transferred, which was nothing. I cannot tell if this issue was ever vetted, so it's possible no one checked to see how the Association first acquired title.